

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MEMPHIS CENTER FOR REPRODUCTIVE
HEALTH, et al.,

Plaintiffs,

v.

HERBERT H. SLATERY III, et al.,

Defendants.

CIVIL ACTION

CASE NO. 3:20-cv-00501

JUDGE CAMPBELL
MAGISTRATE JUDGE FRENSLEY

MOTION FOR INDICATIVE RULING

Pursuant to Federal Rule of Civil Procedure 62.1, Plaintiffs Memphis Center for Reproductive Health d/b/a Choices, Planned Parenthood of Tennessee and North Mississippi, Knoxville Center for Reproductive Health, Femhealth USA, Inc. d/b/a carafem; Dr. Kimberly Looney, and Dr. Nikki Zite (together, “Plaintiffs”), on behalf of themselves and their patients, physicians, and staff move this Court to issue an indicative ruling stating that, if this case is remanded by the U.S. Court of Appeals for the Sixth Circuit, this Court will vacate the July 24, 2020 Preliminary Injunction Order, ECF No. 42 (“PI Order”), and dismiss this case without prejudice under Rule 41(a)(2) as moot.

Defendants’ appeal of the PI Order is currently pending before the *en banc* Sixth Circuit. This case is now moot because of the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* (“*Dobbs*”), No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022), and the resulting imminent implementation of Tennessee’s trigger ban, Tenn. Code Ann. § 39-15-213. Defendants sought an emergency stay of the PI Order with respect to the Cascading Bans after

Dobbs. Defs.’ Emergency Mot. for Stay, *Memphis Ctr. for Reprod. Health v. Slatery*, No. 20-5969 (6th Cir. June 24, 2022), ECF No. 130. The Sixth Circuit ordered Plaintiffs to respond by 9 AM Eastern on June 27, 2022 (today). Ruling Letter, *Memphis Ctr. for Reprod. Health v. Slatery*, No. 20-5969 (6th Cir. June 24, 2022), ECF No. 131. Concurrent with this motion, Plaintiffs are responding and asking the Sixth Circuit to dismiss the Defendants’ appeal as moot, to remand the case back to the district court with instructions to dismiss, and to vacate the appealed order if the Sixth Circuit determines that doing so is necessary under the circumstances.

Pursuant to Local Rule 7.01(a)(1), Plaintiffs informed Defendants on June 24, 2022 of their plan to move to voluntarily dismiss the case without prejudice and their willingness to seek vacatur of the underlying PI Order, which is currently the subject of Defendants’ appeal before the *en banc* Sixth Circuit. Defendants expressed opposition to both dismissal and vacatur. Plaintiffs again followed up via email on June 26, 2022, to inquire about Defendants’ position on this motion. Defendants oppose.

An indicative ruling under Rule 62.1 is warranted here because Plaintiffs are voluntarily electing to dismiss this action without prejudice pursuant to Rule 41(a)(2) and willing to vacate the PI Order. *See* Fed. R. Civ. P. 62.1(a) (“If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may . . . state . . . that it would grant the motion if the court of appeals remands for that purpose . . .”). As required by Rule 62.1(b), upon entry of the requested indicative ruling, Plaintiffs will notify the Court of Appeals pursuant to Federal Rule of Appellate Procedure 12.1 and request a remand so as to permit this Court to grant the relief requested.

For the foregoing reasons, and as set forth in the accompanying Memorandum of Law, Plaintiffs respectfully request that this Court issue an indicative ruling stating that, if the case is

remanded by the Sixth Circuit, this Court will vacate its PI Order enjoining the Cascading Bans and Reason Bans. A proposed Order is attached hereto.

Dated: June 27, 2022

Respectfully submitted,

/s/ Stella Yarbrough

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**Pro hac vice application forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2022, I electronically filed the foregoing through the Court's CM/ECF system, which automatically sent copies to all counsel of record.

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/s/ Stella Yarbrough

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